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11 ConnectU LLC, Pacific Northwest
12 Software, Inc., Winston Williams, and
13 Wayne Chang

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FACEBOOK, INC., and MARK ZUCKERBERG,

Plaintiffs,

v.

CONNECTU LLC, (now known as CONNECTU,
INC.), , ET AL.,

Defendants.

CASE NO. C 07-01389 RS

**DECLARATION OF SCOTT R.
MOSKO IN SUPPORT OF
DEFENDANTS' MOTION FOR
RELIEF PURSUANT TO FED. R. CIV.
P. 56(f)**

Date: February 20, 2008
Time: 9:30 a.m.
Dept.: 4
Mag. Judge: Hon. Richard Seeborg

DECLARATION OF SCOTT R. MOSKO

I, Scott R. Mosko declare,

1. I am an attorney duly licensed to practice law in the state of California and before the Northern District of California. I am a member of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, attorneys of record for Defendants ConnectU, Winston Williams and Pacific Northwest Software, Inc. The matters referred to in this declaration are based on my personal knowledge and if called as a witness I could, and would, testify competently to those matters.

2. Attached as Exhibit A is a true and correct copy of Plaintiffs and counterclaim Defendants' Second Set of Interrogatories (Nos. 19-23), Served on August 31, 2005 in connection with Civil Action No. 1:04-cv-11923 (DWP), a case the parties have commonly referred to as "The Massachusetts Action" filed by ConnectU LLC against Mark Zuckerberg and others.

3. Attached as Exhibit B is a true and correct copy of Facebook Defendants' Responses to Plaintiff's and Counterclaim Defendant's Second Set of Interrogatories (Nos. 19-23), served on October 5, 2005 in the connection with the Massachusetts Action.

4. Attached as Exhibit C is a true and correct copy of Facebook Defendants' Supplemental Responses to Plaintiff's and Counterclaim Defendants' Second Set of Interrogatories (Nos 21 and 23), served on December 9, 2005 in connection with the Massachusetts Action.

5. Attached as Exhibit D is a true and correct copy of Defendant ConnectU, LLC's Second Request for the production of documents to Plaintiff Facebook, Inc., served on August 24, 2004 in this action.

6. Attached as Exhibit E is a true and correct copy of a Local Rule 16.1(D) Joint Statement filed on May 23, 2007 in connection with the Massachusetts Action.

6. Attached as Exhibit F is a true and correct copy of an Order issued in connection with the Massachusetts Action, dated September 13, 2007.

7. Attached as Exhibit G is a true and correct copy of a November 1, 2007 correspondence from Yvonne Greer to Scott Mosko.

8. Attached is Exhibit H is a true and correct copy of a November 5, 2007 correspondence from Yvonne Greer to Scott Mosko.

1 9. Attached as Exhibit I is a true and correct copy of a November 13, 2007
2 correspondence from Theresa Sutton to Richard Werder.

3 10. Attached as Exhibit J is a true and correct copy of Facebook Defendants'
4 Supplemental Response to Court's September 13, 2007 Order RE Location of Relevant Code, served
5 on November 16, 2007 in connection with the Massachusetts Action.

6 11. Attached as Exhibit K is a true and correct copy of Facebook Defendants' Third
7 Supplemental Response to Plaintiff's Interrogatory No. 19, served on November 16, 2007 in
8 connection with the Massachusetts Action.

9 12. Attached as Exhibit L is a true and correct copy of a correspondence from Theresa
10 Sutton to Scott Mosko dated November 28, 2007.

11 13. Attached as Exhibit M is a true and correct copy of a correspondence from Yvonne
12 Greer to Scott Mosko and Valerie Wagner dated November 30, 2007.

13 14. Attached as Exhibit N is a true and correct copy of a printout from an email string, the
14 first email bearing a date of December 14, 2007, at 4:36 p.m. from Theresa Sutton to Scott Mosko.

15 15. Attached as Exhibit O is a true and correct copy of a printout of an email from Scott
16 Mosko to Theresa Sutton, dated December 24, 2007

17 16. Attached as Exhibit P is a true and correct copy of a correspondence from Theresa
18 Sutton to Scott Mosko dated January 8, 2008.

19 17. Each of the facts that will be elicited in the proposed discovery set forth in the
20 accompanying Rule 56(f) Motion is essential to the opposition Defendants expect to file. The
21 written discovery requested in the accompanying Rule 56(f) motion will likely establish at a
22 minimum that the characteristics of Plaintiffs' servers and systems will raise a question of fact as to
23 whether Plaintiffs can satisfy the required elements pursuant to each claim for relief asserted in the
24 Second Amended Complaint. The written discovery and the expected depositions referenced in the
25 accompanying Rule 56(f) motion will likely result in additional evidence proving that Plaintiffs'
26 servers and systems do not qualify for the relief available pursuant to the asserted claims, that
27 Plaintiffs have not and cannot establish they have suffered compensable damages, and that
28 Defendants acts as they relate to the websites in question did not violate the statutes raised in the

1 second amended complaint. Defendants further expect that the evidence they will acquire through
2 the written discovery and the depositions mentioned in accompanying Rule 56(f) motion will prove
3 it is Plaintiffs who have committed the wrongful acts requiring them to compensate Defendants.
4 Defendants expect that, based in part on the evidence produced in late 2007, that Mark Zuckerberg
5 and others hacked their way into www.connectu.com. This evidence was kept from Defendants until
6 only recently. Defendants intend to follow up with further discovery, including at least two or more
7 depositions once the recently-produced evidence is fully analyzed, and expect this evidence, at the
8 very least will provide support for their unclean hands affirmative defense, and will provide the basis
9 for an affirmative counterclaim.

10 18. Defendants also expect to take the deposition of the disclosed expert who filed a
11 declaration in support of the Motion for Summary Judgment.

12 I declare under penalty of perjury under the laws of the United States that the foregoing is
13 true and correct, and that this declaration was executed on the 10th day of January 2008, in Palo
14 Alto, California.

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16 _____/s/
17 Scott R. Mosko
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